

1 Pages 1-53

2 UNITED STATES DISTRICT COURT

3 NORTHERN DISTRICT OF CALIFORNIA

4 BEFORE THE HONORABLE DONNA M. RYU, MAGISTRATE JUDGE

5 PLANNED PARENTHOOD)
FEDERATION OF AMERICA,)
6 INC., et al.,)
)
7 Plaintiffs,)
)
8 VS.) NO. CV-16-236 WHO (DMR)
)
9 CENTER FOR MEDICAL)
PROGRESS, et al.,)
10) OAKLAND, CALIFORNIA
Defendants.) THURSDAY
) JULY 19, 2018
) 11:00 O'CLOCK A.M.

12
13 **TRANSCRIPT OF PROCEEDINGS**

14 **APPEARANCES:**

15 **For Plaintiffs:** ARNOLD & PORTER KAY SCHOLER, LLP
16 Three Embarcadero Center, 7th Floor
San Francisco, California 94111

17 BY: AMY L. BOMSE, ATTORNEY AT LAW
DIANA STERK, ATTORNEY AT LAW

18 **For Defendant DAVID DALEIDEN:**

19 LIFE LEGAL DEFENSE FOUNDATION
20 P.O. BOX 1313
Ojai, California 93024
21 BY: CATHERINE W. SHORT, ATTORNEY AT LAW

22 (FURTHER APPEARANCES ON NEXT PAGE.)

23 **Reported By: Katherine Wyatt, CSR 9866, RMR, RPR**

24 Pro Tem Reporter - US District Court
Computerized Transcription By Eclipse

25

1 **FURTHER APPEARANCES:**

2 **ALSO FOR DEFENDANT DALEIDEN:**

3 **THOMAS MORE SOCIETY**

4 **PETER BREEN, SPECIAL COUNSEL**

5 **THOMAS BREJCHA, JR., ESQUIRE**

6 19 S. LASALLE STREET, SUITE 603

7 CHICAGO, ILLINOIS 60603

8

9 **FOR DEFENDANT RHOMBERG:**

10 **MICHAEL MILLEN, ESQUIRE**

11 119 CALLE MARGUERITA #100

12 LOS GATOS, CALIFORNIA 95032

13

14 **FOR DEFENDANT NEWMAN:**

15 **MAYALL HURLEY**

16 **BY: VLADIMIR KOZINA, ESQUIRE**

17 2453 GRAND CANAL BOULEVARD

18 STOCKTON, CALIFORNIA 95207

19

20 **FOR DEFENDANTS CENTER FOR MEDICAL PROGRESS, ET AL:**

21 **LAW OFFICES OF CHARLES LIMANDRI, APC**

22 **BY: PAUL M. JONNA, ESQUIRE (BY PHONE)**

23 P. O. BOX 9120

24 RANCHO SANTE FE, CALIFORNIA 92067

25

1 FURTHER APPEARANCES NEXT PAGE

2 **FURTHER APPEARANCES:**

3 **FOR DEFENDANT MERRITT:**

4 **LIBERTY COUNSEL**

5 **BY: HORATIO MIHET, ESQUIRE (BY PHONE)**

6 P. O. BOX 540774

7 ORLANDO, FLORIDA 32854

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 JULY 19, 2018

11:00 O'CLOCK A.M.

PROCEEDINGS

4 **THE CLERK:** Calling civil case C-16-0236 WHO,
5 Planned Parenthood of America versus Center for Medical
6 Progress, et al.

7 Please state your appearances, Counsel.

8 **MS. BOMSE:** Good morning, Your Honor. Amy Bomse,
9 of Arnold & Porter on behalf of Plaintiffs. And with me is
10 Diana Sterk of my office.

12 **MR. BREEN:** Good morning, Your Honor. Peter
13 Breen on behalf of Defendant Daleiden. And along with me
14 is Thomas Brejcha, all Counsel. Cathy Short is here on
15 behalf of Albin Rhomberg. Vladimar Kozina and Mike Millen.

16 And I'm not sure which -- Mr. Kozina
17 represents Mr. Newman. Mr. Millen also represents
18 Mr. Rhomberg.

19 And we have the Defendant Daleiden present in
20 court, as well.

21 **THE COURT:** All right. Good morning, everyone.
22 I know we have a few people by court call. But before we
23 get your appearances, you say Mr. Brejcha, that's how he
24 pronounces his name?

25 **MR. BREEN:** Yes, B-R-E-J-C-H-A.

1 **THE COURT:** All right. Who do we have on the
2 phone?

3 **MR. JONNA (BY PHONE):** Good morning, Your Honor.

4 Paul Jonna on behalf of Defendant --

5 **THE COURT:** Good morning.

6 **MR. JONNA (BY PHONE):** -- CMP and BioMax.

7 **THE COURT:** Good morning.

8 **MR. MIHET (BY PHONE):** Horatio Mihet for
9 Defendant Merritt.

10 **THE COURT:** Good morning. Is Mr. Heffron on the
11 phone? He asked for a court call appearance, but he hasn't
12 made an appearance yet. Are we expecting him?

13 **MR. BREEN:** Well, he's out of our office, so
14 maybe something happened. I don't know.

15 **THE COURT:** Okay.

16 **MR. BREEN:** We're here in court.

17 **THE COURT:** Any reason why we can't go forward?

18 **MR. BREEN:** No, Your Honor.

19 **THE COURT:** Okay. So we're here on Defendants'
20 motion to compel further responses to an interrogatory that
21 was sent to the four affiliate plaintiffs PPLA, PPMM, PPN
22 and PPPSW. And these are interrogatories that followed on
23 a request for admission. And all of this has to do with
24 getting information about those affiliates' compliance with
25 Federal law on fetal tissue donation practices.

1 So in order to be discoverable, information
2 has to be both relevant and proportional under Federal Rule
3 of Civil Procedure 26 (B) (1).

4 So, Mr. Breen, let me ask you some
5 foundational questions here. Is there any evidence that
6 any Planned Parenthood affiliate has violated Federal law
7 by receiving money in excess of the allowable reimbursement
8 costs under Federal law?

9 **MR. BREEN:** And, Your Honor, I would point you to
10 the United States Congress criminal referrals of several of
11 the plaintiffs here on that very basis.

12 **THE COURT:** Have there been any findings
13 whatsoever? And I understand there's an investigation
14 going, but any findings?

15 **MR. BREEN:** But that was a formal finding of both
16 the United States House, the specific panel that they
17 convened for that purpose. The United States Senate,
18 Senator Grassley of the Judiciary Committee, they made
19 findings and referred it out.

20 **THE COURT:** Okay.

21 **MR. BREEN:** And then, Your Honor, the issue --

22 **THE COURT:** Mr. Breen, I have to tell you that I
23 don't -- I don't know what those findings are. I mean, I
24 would need to get the record to understand what you're
25 talking about with respect to findings.

1 Are they somewhere that I can access on the
2 docket? Because maybe they have already been submitted
3 somewhere.

4 **MR. BREEN:** They are likely on the docket
5 somewhere. But a quick Goggle search they are on the first
6 page of the Goggle search, "United States Congress Fetal
7 Tissue Reports."

8 And we could provide that to the Court, but
9 it's a public document.

10 **THE COURT:** Okay. And from your perspective,
11 what do they say?

12 **MR. BREEN:** Well, and Your Honor, so what we've
13 got at issue right now are the four affiliates in
14 California who are four of the plaintiffs who took direct
15 monies in exchange for fetal tissue specimens.

16 And so in that, the reports explain the model
17 which Mr. Daleiden and Center for Medical Progress showed,
18 began showing through their videos and in their public
19 communications the fetal tissue. They call it "TPP,"
20 tissue procurement business.

21 They go to the abortion facility. They send a
22 tech into the abortion facility on abortion days. So they
23 will take the fetal remains --

24 **THE COURT:** I'm just going to stop you,
25 Mr. Breen. I apologize, but I want to make sure my

1 question gets answered first.

2 **MR. BREEN:** Right.

3 **THE COURT:** So I'm just trying to understand what
4 record evidence we have, because nothing was submitted, and
5 I understand that. But if you could just point me to the
6 evidence. You identified a couple of pieces out of
7 Congress, but what is it that those -- if I open those
8 documents, what findings, what evidence do they contain
9 that support that a Planned Parenthood affiliate has broken
10 Federal law on fetal tissue reimbursement?

11 **MR. BREEN:** So what you'll see, Your Honor, is --
12 just if I may, just to explain the business models, because
13 that gives you -- it's explained in the reports and it's in
14 our public domain.

15 **THE COURT:** And my understanding is there can be,
16 under Federal law, fetal tissue donation where there's
17 money flowing back for that as long as it's reimbursement
18 of allowable costs set forth in the regulation and not
19 above that, because it would be profiteering and in
20 violation of Federal law. Correct?

21 **MR. BREEN:** And the Congressman from California,
22 Mr. Waxman, was adamant when this regulation was enacted in
23 1993 at the Federal level that there would be no market in
24 fetal tissue.

25 **THE COURT:** Understood.

1 **MR. BREEN:** Right. So the idea is the money's
2 coming and there's no justification within the six
3 allowable categories of costs incurred by the abortion
4 facility.

5 **THE COURT:** Still waiting for the answer to my
6 question.

7 **MR. BREEN:** Okay. That's in the Congressional
8 report. So, Your Honor, if a -- if an abortion facility
9 provides, say, the tech goes in. They collect ten
10 specimens in a day. They take them with them. They ship
11 them off to researchers.

12 At the end of the month, the facility gets a
13 check for \$550 and they had no expenses, they violated this
14 statute.

15 **THE COURT:** Well, that's sort of an
16 interpretation of how you apply the statutes. But so I'm
17 not sure. I'm just asking, because I'm expecting that when
18 I -- you've pointed me to evidence in the record that a
19 Planned Parenthood affiliate has violated the Federal law
20 on fetal tissue donation.

21 **MR. BREEN:** And, Your Honor, this is -- this is a
22 core point of dispute between the parties. And we've --
23 and, Your Honor, in terms of --

24 **THE COURT:** Is there any evidence that you can
25 point me to?

1 **MR. BREEN:** I would respectfully request, Your
2 Honor go -- and you can do a keyword search for the
3 affiliates that are actually at issue here.

4 **THE COURT:** I'm happy to do that. I plan on
5 doing that. I just want a straight answer to my question.

6 **MR. BREEN:** Yes, absolutely.

7 **THE COURT:** Tell me what it is so that when I
8 open the reports I don't have to dig around. I can see
9 what you're talking about.

10 **MR. BREEN:** You will see the Congress laying
11 out -- there were explanations apparently provided by some
12 of the plaintiffs here as to their costs. The Congress
13 goes through each of their alleged costs and notes how they
14 do not comply, for the most part, with the Federal law. So
15 they don't fall into any of the allowable categories, the
16 alleged costs that they came forward.

17 Now, in this case, Your Honor, they are
18 refusing to even give us that alleged cost structure that
19 they provided to Congress.

20 **THE COURT:** Right. That's why we are here today.

21 **MR. BREEN:** So what we're saying.

22 **THE COURT:** Is there anything else you say is
23 evidence of a violation?

24 Anything that you found or that your clients
25 were able to garner through when they infiltrated the

1 conferences that are at issue?

2 **MR. BREEN:** Sure. And, Your Honor, there are
3 violations of other Federal laws, as well. So there was --
4 you're talking about the partial abortion issues? There's
5 other issues.

6 **THE COURT:** I'm talking about the one that is in
7 front of me today.

8 **MR. BREEN:** Okay. Just narrowing to this
9 statute, what my client is showing, as well, is the general
10 idea of the first -- when you look at the videos and look
11 at what occurred, you see a negotiation about price per
12 specimen, with the relevant doctors. That is not a
13 negotiation over how much are your allowable costs.

14 Just by nature of that negotiation it's a
15 profit negotiation. It's not a cost negotiation.

16 **THE COURT:** Okay. For the videos that you are
17 referring to, are those -- do those take place in -- well,
18 let me just ask you: Are those ones that Judge Orrick has
19 reviewed? Because, if not, I need to understand what they
20 are.

21 **MR. BREEN:** Just, again, Your Honor, we've got
22 hundreds of hours of video. But the first two -- the first
23 one was Dr. Nucatola. That's the -- there was a lunch
24 meeting. And the doctor is talking about how she will
25 modify her abortion procedure in order to get better fetal

1 tissue, which we also contend is illegal.

2 But, then they talk about the process that the
3 tech comes in. They do all of the work, and then the
4 clinic gets a check.

5 **THE COURT:** Are these videos -- so I know that
6 Judge Orrick has reviewed a number of videos and talked
7 about them and made findings about them in the order that
8 he issued in the NAF case. All I'm trying to understand is
9 whether the videos that you are referring to are things
10 that Judge Orrick has already made that finding on or not.
11 Because, if not, I need to know what they are, and I need
12 to see them.

13 **MR. BREEN:** I don't believe that -- I believe the
14 Judge was -- again, I don't know the full corpus of what he
15 reviewed. But the videos --

16 **THE COURT:** It's right in the order so we can go
17 through.

18 **MR. BREEN:** And maybe so. The videos in issue,
19 though, are NAF join videos for two-year conferences.
20 These other videos are public videos. The lunches, the
21 first lunch is the doctor is -- she was the medical
22 director for Planned Parenthood Federation of America, but
23 also works at one of the affiliates that is an affiliate
24 plaintiff here.

25 **THE COURT:** Okay. Are there any unedited, the

1 raw video, not the ones that were provided to the public,
2 because the allegation here is that the ones that were
3 provided to the public were manipulated, were edited.
4 Right.

5 So can -- if you are saying: "Judge, there's
6 evidence that Planned Parenthood affiliates violated the
7 Federal Fetal Tissue Donation law, and here's the
8 evidence."

9 You pointed me to two Congressional reports.
10 I can take a look at them.

11 **MR. BREEN:** Sure.

12 **THE COURT:** You said there's video. I want to
13 know if there's raw video. And, if so, what you're talking
14 about. And I might ask you to submit them.

15 **MR. BREEN:** Sure.

16 **THE COURT:** Okay? But I'd also like you to
17 identify enough for Ms. Bomse to know what you're talking
18 about. So you said Dr. Nucatola --

19 **MR. BREEN:** And Dr. Nucatola was the first. Dr.
20 Gatter was the second that was the -- there was a
21 negotiation on price per specimen there. And there are
22 other videos. I don't have all of them right at the top of
23 my mind.

24 But those are the first two. There was
25 massive public interest. Those were the first two released

1 that I recall --

2 **THE COURT:** Okay.

3 **MR. BREEN:** -- that caused the --

4 **THE COURT:** Anything else?

5 **MR. BREEN:** Certainly, Your Honor. We would --

6 we would say when you look through this complaint, there is
7 an allegation --

8 **THE COURT:** Okay. I meant --

9 **MR. BREEN:** Okay.

10 **THE COURT:** -- any other evidence that you would
11 point to?

12 And, Ms. Short, I see you standing up, and
13 I'll get you up here in just a minute.

14 **MR. BREEN:** And there are contracts, as well,
15 Your Honor. We have got contracts for fetal tissue
16 specimens, things like that. I mean, there's a -- Your
17 Honor, what you're asking me is:

18 "To your core defense in the case, do you
19 have any evidence?"

20 I'm saying: "Yes," and I can -- I mean, if we
21 need supplemental briefing on that I'm glad to provide it.
22 But in this format it's probably not the best way to do it.
23 I can point you to the parts of the Congressional record.

24 We can point you to raw evidence that we've
25 got. If you need the unedited videos, I believe were

1 placed online along with the edited videos.

2 **THE COURT:** Okay.

3 **MR. BREEN:** We can find more or give you official
4 Bates-stamped, what have you, videos. We can do all of
5 that, Your Honor, but that's -- you're asking us can we
6 make at least a preliminary showing, as I understand your
7 question. Can we at least make a preliminary showing that
8 we're not on a fishing expedition.

9 And I will represent to you absolutely, yes.

10 And this is the core of our case. The Defendants claim
11 that the Plaintiffs have violated Federal law. The
12 Plaintiffs have said that that's wrong. They have complied
13 with all Federal law.

14 **THE COURT:** Okay. I was just trying to
15 understand --

16 **MR. BREEN:** Sure.

17 **THE COURT:** -- what's out there. So, yes, to get
18 at your point, there is an initial showing that there is
19 something.

20 So I'm now going to, first of all, make
21 sure -- and I'm guilty of this, too, so I apologize --
22 let's make sure that we don't speak over each other because
23 our reporter has a tough enough job. But also, I reserve
24 the right to cut you off, Mr. Breen, because -- and I'm
25 sorry, but that's what comes with getting to sit up here.

1 Because, really, I want to make sure that I get the answers
2 before we go forward. So apologies, but that's what was
3 going on.

4 Ms. Short, is there something you would like
5 to add?

6 **MS. SHORT:** I would like to, yes, Your Honor.

7 The requests for admissions were part of the
8 entire set of requests for admissions that were sent to
9 each of these affiliates, and as well, to Planned
10 Parenthood Federation of America. And they did not -- they
11 refused to answer a number of them, but we're going with
12 the ones they actually denied.

13 And the other -- we led up to this question
14 that we're talking about, the one that talks about:

15 "Admit that you took in more than you
16 spent on these costs," by asking whether they had an
17 audited -- someone audited those costs for them.

18 "No."

19 We then said:

20 "Admit that you did not attempt to
21 determine the actual costs of your fetal tissue program
22 until after July 13, 2015."

23 In other words, they had years of doing this
24 and admit that you didn't actually try to figure out what
25 your costs were until after the videos were released.

1 "Plaintiff admits that the cost analysis
2 related to its Fetal Tissue Donation Program that was
3 produced to the Judiciary Committee of the United States
4 Senate was conducted in response to the Judiciary
5 Committee's request and that plaintiff had not previously
6 conducted any similar such cost analysis."

7 So they are admitting that they weren't
8 keeping track of their costs. And they had nobody -- they
9 were actually not in compliance with Planned Parenthood's
10 own policies about conducting these programs. All of this
11 was admitted in other portions of the request for
12 admissions that we sent out.

14 Ms. Bomse, I'm trying to understand from the
15 Planned Parenthood's perspective whether there's any
16 evidence. And so this is, in part, responsive to
17 Mr. Breen's points and Ms. Short's points. What does the
18 record tell us about compliance with that Federal
19 regulation?

20 **MS. BOMSE:** Thank you, Your Honor. So, first,
21 the record tells us that there are 59 Planned Parenthood
22 affiliates, and there were only four that even had programs
23 where they facilitated the patients who wished to donate
24 fetal tissue and received reimbursement for that process.

25 I welcome the court reviewing the reports by

1 the Senate. I think what you'll find is there were no
2 findings. That there was a conclusion by Senator Grassley
3 and his subcommittee that they thought more should be done.
4 And that's what they asked the Department of Justice to do.

5 But Mr. Breen represented to the Court that
6 Planned Parenthood had no expenses related -- that the four
7 affiliates have no expenses related to the facilitation of
8 fetal tissue, and that is simply absurd.

9 Many of the affiliates had the obligation of
10 seeking or obtaining consent, which is a request. You're
11 required by law to obtain a separate consent for donation
12 of fetal tissue.

13 I'm aware that some of -- some of the tissue
14 procurement organizations provide that service. Others
15 don't.

16 There's staff time allowing the clinician to
17 come in. There's space that's taken up by the clinician.

18 There's a good deal of overhead and staff time
19 that's required. And the amounts that are coming in, which
20 is evidence that's in this record and also in these
21 reports, were not significant.

22 So in the end, the notion that the costs and
23 the money that was coming in -- the costs were as much, if
24 not more, than what was coming in, is perfectly reasonable.

25 And, Your Honor, Counsel's correct. Planned

1 Parenthood did, at the request of Senator Grassley, prepare
2 a cost analysis of one-year for all four Planned Parenthood
3 affiliates and what that cost analysis, which was prepared
4 under Planned Parenthood's Counsel, showed that it was that
5 there was a significant loss to each of those affiliates.

6 Now, it's true that people can quibble over
7 line items. And there is quibbling over line items. But
8 Planned Parenthood did that at the request of Senator
9 Grassley. And the result of that was that there was no
10 profit.

11 So there is no evidence in any record.
12 There's been no finding that any of the four affiliates
13 ever profited. And there's been no finding that any of
14 those Planned Parenthood affiliates violated this law that
15 is at issue.

16 **THE COURT:** Can I ask you about the report that
17 was prepared?

18 **MS. BOMSE:** Yes.

19 **THE COURT:** So was that for -- separately for
20 each of the affiliates or lumped together?

21 **MS. BOMSE:** No. It was separately for each.

22 **THE COURT:** And for what period of time did it
23 cover?

24 **MS. BOMSE:** It was for 2015. And it's at page
25 279 of Senator Grassley's report.

1 **THE COURT:** Okay. Now, Mr. Breen also talked
2 about two -- well, he said two key videos are Nucatola and
3 Gatter.

4 **MS. BOMSE:** Right.

5 **THE COURT:** What do you think I would see if I
6 looked at that?

7 **MS. BOMSE:** So I would welcome Your Honor to look
8 at the raw video, because what you will see in it is that
9 both doctors emphatically denied that there was any intend
10 to profit. And, in fact, as we've said in our complaint,
11 Dr. Nucatola said ten separate times:

12 "There's no intent to make money here.
13 All we're doing is trying to recoup our costs."

14 All of that was left on the cutting room floor
15 when Mr. Daleiden of CMP released their video accusing
16 Planned Parenthood of engaging in selling fetal tissue for
17 profit.

18 And as to Dr. Gatter, Counsel for CMP
19 emphasized that what was going on there was a negotiation.
20 Well he's learned from the documents that Mr. Daleiden
21 communicated to his co-defendant, his co-conspirator that
22 they wanted -- before they went into this secret meeting
23 wearing cameras, they wanted to make it look like a
24 negotiation. Try to make it look like she's haggling.

25 And lo and behold what do you get? You get a

1 video release by CMP that says:

2 "Planned Parenthood doctor haggles over
3 fetal tissue."

4 But watch the whole video. Don't watch the
5 short -- well, watch the short video, too, to see what they
6 kept and what they deleted. But those videos are not
7 evidence of anyone seeking to profit from fetal tissue.

8 **THE COURT:** That's Nucatola and Gatter?

9 **MS. BOMSE:** Right.

10 **THE COURT:** Now, Ms. Short, I had a number of
11 requests for admissions which should be easy for me to see
12 here in writing. Okay. So I have --

13 **MS. BOMSE:** Your Honor, I'm sorry. If the Court
14 would consider those responses evidence of violation of
15 law, I'd want to respond to that.

16 **THE COURT:** Go ahead.

17 **MS. BOMSE:** Thank you. So, Your Honor, it's
18 absolutely correct that Planned Parenthood responded, as
19 Ms. Short stated.

20 First of all, there's nothing in Federal law
21 that requires an audit. The Federal law says simply that
22 you can recoup your reasonable coats for a series of
23 different categories of expenses.

24 It's true Planned Parenthood Federation of
25 America had its own more strict obligation that they

1 required that was not always complied with.

2 That's the way it often goes with the people
3 at the top are very careful and say:

4 "This is what we should do for our own
5 benefit, our own protection." But it wasn't followed.

6 But that is not evidence that anyone was
7 intending to profit. In fact, it's the opposite. If you
8 want to profit you need to know what it's costing you.

9 **THE COURT:** Okay.

10 **MR. JONNA (BY PHONE):** Your Honor, this is Paul
11 Jonna. May I briefly respond to a couple of points?

12 **THE COURT:** Sure.

13 **MR. JONNA (BY PHONE):** So Your Honor knows, the
14 Select Investigative Panel's reports and the introduction,
15 number 15, specifically says that the panel uncovered
16 documents and received testimony from confidential
17 informants indicating that four Planned Parenthood Clinic
18 may have violated Federal law, specifically Title 42, USC
19 Section 289 (G), which prohibited the transfer of fetal
20 tissue for valuable consideration.

21 And the next page, panel also says that it
22 determined that Planned Parenthood affiliates which then
23 expressed procured fetal tissue, had no legally
24 reimbursable costs.

25 And also, Your Honor, on page 172 of that

1 report it states that the panel determined that PPSA
2 affiliates which --

3 **THE COURT:** Mr. Jonna? Mr. Jonna.

4 **MR. JONNA (BY PHONE):** Yes.

5 **THE COURT:** I need you to stop just for a moment.

6 So your voice is cutting in and out. I've had been
7 watching our court reporter to see how she's handling this.

8 I think she got it up until this last example you used. I
9 would like you to restate it for the record because I think
10 you were cutting out too much for us to get it.

11 **MR. JONNA (BY PHONE):** Sorry. So the last
12 example would be the point that the panel determined that
13 Planned Parenthood affiliates, which StemExpress, procured
14 fetal tissue, had no legally reimbursable costs.

15 And then, on page 172 of the report, it states
16 that the panel determined that PPSA affiliates, which
17 StemExpress procured fetal tissue had no allowable costs
18 under 42 U.S.C. 289 (G).

19 And it says that StemExpress embedded tissue
20 technicians to obtain consent to donate fetal tissue. And
21 then, it goes on to say the panel determined PPSA
22 affiliates had no allowable costs.

23 And then, the next -- there's just two other
24 quick examples, Your Honor.

25 The next report is the Majority Staff Report

1 of the Committee of the Judiciary. Both of these reports
2 are online. If you look at page three, it says that --
3 let's see.

4 The companies failed to provide meaningful
5 cost analysis that would justify the amounts received.
6 They have attempted to rely on vague, expansive and
7 undefined, indirect costs and general overhead to justify
8 the payments required.

9 And so these categories are so broad as to
10 allow them would be inconsistent with the law's clear
11 intent to prevent the buying and selling of fetal tissue
12 since prohibited payments can simply be recategorized and
13 falsely justified.

14 And then, Your Honor, another example I would
15 point you to is on page five, under .7. It says:

16 "Four Planned Parenthood affiliates have
17 had paid fetal tissue programs" -- I'm sorry, Your Honor.
18 I'm pointing at the wrong one. It's page seven.

19 It says:

20 "It appears that the affiliates' payments
21 may have violated the ban on buying and selling fetal
22 tissue. In addition, the actions of PPSA and its
23 affiliates after PPSA learned of the affiliates' violation,
24 suggest the possibility of a violation of the Federal
25 criminal conspiracy law."

1 And then, the last example I'll point the
2 Court to is on page 53. It said:
3 "There is a reason to question whether
4 Planned Parenthood fully complied with Federal requirements
5 relating to fetal tissue transfer payments. As noted
6 above, when PPSA learned that its affiliates had failed to
7 comply with the policy it had in place to prevent breaking
8 the law, PPSA reportedly contacted the affiliates, and then
9 modified PPSA's accreditation reviews in a manner that
10 facilitated the continuation of those fetal tissue
11 payments.

12 "PPSA and the affiliates' actions may
13 implicate the Federal conspiracy statute."

14 I do encourage the Court to read their report.
15 I just wanted to point out those examples.

16 **THE COURT:** Okay. Thank you.

17 Ms. Bomse?

18 **MS. BOMSE:** Your Honor, I would ask the Court
19 also to note that there are minority reports that were also
20 issued. This was a down-the-line Republican-Democratic,
21 you know, politically-charged situation.

22 There are people who were on that committee
23 who have been committed for years and years to defunding
24 Planned Parenthood.

25 So I think the Court needs to review anything

1 that's in that report with that in mind.

2 **THE COURT:** Okay.

3 **MS. BOMSE:** And I would also note that each time,
4 or virtually each time Mr. Jonna quoted the conclusions,
5 the conclusions were "may have violated, reason to
6 question."

7 It's the opposite of a finding.

8 **THE COURT:** Okay. I would like to have the
9 request for admission, just so that I have them, the ones
10 that you pointed out, Ms. Short.

11 **MS. SHORT:** Okay.

12 **THE COURT:** So if you can put those -- submit
13 them on the record. I'm not asking for more than what
14 you've identified. I'm counting on Counsel to just say
15 "This is key stuff."

16 So there were several that you -- I don't need
17 the whole body of RFA's. Just give me the several that you
18 pointed out that you think I should consider.

19 Mr. Breen and colleagues, please give me the
20 Nucatola and Gatter video. I would like the raw video as
21 well as if there's an edited video you want me to see,
22 that's fine.

23 But I want the underlying raw video of those
24 two segments. The rest I can get.

25 Well, why don't you make it easy on me? Go

1 ahead and submit the two, or point them out to me if they
2 are already in the record. The latter is preferable so we
3 don't litter the record with Congressional reports. Okay?

4 **MS. BOMSE:** Your Honor, would you like both the
5 democratic minority report and the majority report?

6 **THE COURT:** The entire so I can see the context.
7 Again, if it's already in the record we don't need to kill
8 another tree. Just tell me where I should look.

9 I don't need more citations. I don't want
10 more argument on it. Okay?

11 You've told me what I should consider, and I
12 will take a look.

13 **THE COURT:** All right?

14 **MR. BREEN:** And, Your Honor, I think the
15 contracts and invoices, just to give you a slight --
16 because there are also attachments to these documents.

17 **THE COURT:** I understand there's contracts and
18 invoices. And I've seen some of the invoices because that
19 was part of the last round. I don't think that's
20 particularly helpful. So I understand that they exist.
21 Okay?

22 **MR. BREEN:** Okay.

23 **THE COURT:** All right. So let me ask you,
24 Ms. Bomse, just thinking through the proportionality
25 issues, how hard would it be for each of the affiliates to

1 generally explain, because we have it for 2015. Right?

2 It's actually not general. Sounds pretty specific.

3 **MS. BOMSE:** Right.

4 **THE COURT:** But if there were a general
5 explanation for each of those four affiliates for the
6 period of time at issue, that is 2011 through 2015.

7 **MS. BOMSE:** Right.

8 **THE COURT:** Is that terribly burdensome?

9 **MS. BOMSE:** Well, I think the answer to that is,
10 Your Honor, preparing the 2015 cost analysis that we've
11 talked about was unbelievably burdensome.

12 **THE COURT:** I'm not saying --

13 **MS. BOMSE:** A cost analysis. I understand.

14 Sure.

15 **THE COURT:** I'm talking about:

16 "Here's how we do it. We look at, you
17 know, the overhead. And we" -- sort of a more generalized
18 explanation --

19 **MS. BOMSE:** Right.

20 **THE COURT:** -- of how those affiliates make sure
21 they are complying with Federal law.

22 **MS. BOMSE:** Yes, Your Honor. So as has been
23 acknowledged and was acknowledged in Congress and was
24 acknowledged here today, there wasn't a process to do it.
25 There was a -- it was very ad hoc.

1 These were extremely small programs going on.
2 And when we say "at affiliates," we're talking about
3 actually at a couple of locations for very, very large
4 affiliates who had, you know, 10, 20, 30 health centers
5 where abortions were being provided. And at maybe one or
6 two of them these were going on.

7 At the time Mr. Daleiden's videos came out
8 there were numerous people at Planned Parenthood who had no
9 idea that these programs existed, because they were small
10 and they were ad hoc.

11 So I wouldn't want to represent to the Court
12 that we can tell defendants:

13 "Here's how we did it over the years."

14 It is certainly the case that we could answer
15 the question:

16 "Here is what we generally consider to be
17 costs that we incur related to the -- facilitating the
18 donation of fetal tissue."

19 Now, that's the answer to your question, so I
20 want to stop. But I do have other things I want to say
21 about that.

22 **THE COURT:** Okay. General costs that we incur
23 related to the facilitation of fetal tissue. Is that what
24 you said?

25 **MS. BOMSE:** Right.

1 **THE COURT:** And are those different for each of
2 the four affiliates?

3 **MS. BOMSE:** I expect they would be somewhat
4 different because, for example, there were different tissue
5 TP -- TPOs providing different services. So that would
6 mean if a TPO provided certain services the affiliate
7 wouldn't incur those costs. So they would be -- they would
8 be different.

9 **THE COURT:** Okay. All right. So what do you
10 want to say?

11 **MS. BOMSE:** What I want to say is I want the
12 Court to consider to the extent that the Court's
13 contemplating requiring us to do that where this goes. I
14 think we need to remember why we're here. We're here
15 because there was a three-year campaign to get inside
16 Planned Parenthood to smear Planned Parenthood.

17 And the kind of evidence that is now being
18 sought is precisely what defendants hoped that they could
19 sneak inside of some office and obtain. And so what I'm
20 concerned about is we will answer this question, and there
21 will be more questions. And none of it, none of it goes to
22 the claims in this case.

23 **THE COURT:** So I understand and I read your
24 papers. Okay? There's some things that were unanswered,
25 folks, honestly. And part of that is about

1 proportionality. Part of it is what is out there, and I
2 got that information from you. I want to review it myself,
3 because I need to analyze it through 26 (B) (1). And part
4 of that is are we going down a rabbit hole that, you know,
5 if you look at the 26 (B) (1) factors, the two most
6 important ones in this case have to do with whether or what
7 is the importance of the discovery resolving the issues in
8 the case. Okay?

9 So how key is this to resolving the issues in
10 the case? And whether the burden or expense of the
11 proposed discovery outweighs its likely benefits. Because
12 I think we all agree the case is very important, and that's
13 the first factor.

14 And there's no dispute there. There's no
15 dispute that Planned Parenthood has greater access to this
16 information than the defendants. There's nothing on the
17 record about your relative resources so that's kind of a
18 wash. But the two most important are the ones I mentioned:
19 How critical is this information to resolving something in
20 the case that's important?

21 So it's not just: Is it something that
22 defendants want? But: Is it critical or how critical is
23 it to your defense?

24 I have looked at what you've argued in your
25 papers, and I want to understand better what the state of

1 evidence is, which is why I asked you the initial question
2 and I'll get that. I'll review that.

3 Without that I can't really walk through. But
4 I understand your point, Ms. Bomse. I mean, the Court
5 needs to figure it out. If it turns out this is a rabbit
6 hole, this is not particularly relevant, or even if it's
7 marginally relevant or marginally relevant on something
8 that is not going to be a big issue in the case, okay?
9 Then, there may be no further discovery or limited
10 discovery.

11 If it turns out to be central in someway,
12 that's always going to justify more discovery. So that's
13 what I'm -- that's what I need to get at. But I need to
14 review the kinds of things that we just talked about.

15 **MR. BREEN:** And if I may, Your Honor.

16 **THE COURT:** Sure.

17 **MR. BREEN:** Thank you for giving us your insight
18 on that. I mean, Your Honor, this is something we
19 anticipate presenting to the jury. This is the issue of
20 whether they violated the Federal laws is core to their
21 claim of whether it's a smear. I mean, this is so central.

22 **THE COURT:** Here's the point. Here's the point
23 that nobody really talked about, but I think is critical.
24 I mean, the allegations here are that defendants illegally
25 infiltrated protected conferences and purposefully tried to

1 engage Planned Parenthood representatives in discussions to
2 try to catch them on tape saying things that would
3 incriminate their violation of Federal Fetal Tissue
4 Donation Laws. Right? That's the allegations.

5 And that further allegation is that defendants
6 then took that video footage and spliced it together in a
7 very misrepresenting way, put it out to the public, and
8 caused a wave of threats and violence against Planned
9 Parenthood that they then had to respond to with expensive
10 security costs and the like.

11 So I am not at all clear that it's admissible
12 or even relevant, but I'm not sure yet. If there's things
13 that turn out after the fact to be something that's dug up
14 that's a problem, but that was not part of what you -- what
15 your clients found in the conference, then that's a very
16 different relevance calculation.

17 **MR. BREEN:** And, Your Honor, remember it's not
18 just videos. So we've had our media releases, our media
19 appearances, all of that. So the defendants have been
20 alleging they were violating the law. So if they were
21 violating the law, that was part of the harm here.

22 So that's what they are saying:

23 "Well, we were smeared."

24 And just like in Food Lion, if it turns out
25 the defendants are correct, they were violating the law,

1 then your damages go all the way down because then they
2 were responding to the truth.

3 **THE COURT:** Right. I think that's a bit of a
4 gloss, Mr. Breen. But I understand the point. But I'm
5 also concerned. I hear the point that you're saying this
6 is central the -- I mean both sides have a very different
7 view of this. Right?

8 Defense says: "This is our defense."

9 Plaintiffs say: "This isn't relevant at all."

10 Okay?

11 I think there's a difference and whether this
12 is potential after-the-fact justification versus something
13 that is flowing from what turned up as part of the
14 defense's objections in the case. So I'll leave it at
15 that. But is there something more you want to argue?

16 **MR. BREEN:** I would just say, Your Honor, it's
17 going to be the Plaintiffs' burden to argue and to prove
18 that they were in compliance with Federal laws and State
19 laws that were relevant. That's going to be their burden.

20 **THE COURT:** I'm not sure that that's something
21 that they need to prove. That's for Judge Orrick to sort
22 out about what are the claims and defenses in the case.

23 **MR. BREEN:** Right.

24 **THE COURT:** I don't understand that to be an
25 issue in the case.

1 **MR. BREEN:** Well, and that, again, Your Honor,
2 we've got evidence of a willingness to violate law. You've
3 got evidence of violations. And then, a claim that this is
4 a smear when, in reality, they were willing to violate the
5 law. They did violate the law.

6 So the issue of whether they actually violated
7 the law is very much in play.

8 **THE COURT:** Okay.

9 **MR. BREEN:** That was part of the public debate.
10 They are saying that we were lying. And we're saying:
11 "No, we were correct."

12 And, I mean, that's core to the case that
13 whether there were or were not violations of various
14 Federal laws.

15 **THE COURT:** Okay. I understand the position.

16 Looks like Ms. Short has something. Come to
17 the mic.

18 **MS. SHORT:** I'm sorry. I just wanted to add one
19 thing about how this discovery itself is relevant. This is
20 about the costs. And that's one of the things in the
21 videos. There's a lot of discussion, as their defense is:
22 "We were just getting our reasonable costs."

23 No. At this point, there is no debate anymore
24 about whether they were receiving money. The question is
25 about the costs. And that's what this discovery is,

1 directly. How do you explain those costs? And that's what
2 is in the videos, too.

3 They say: "Well, it was consent." But
4 consent isn't a legally recoverable cost. And how much was
5 that consent? It is all very much bound up with what was
6 in those videos about what they were saying:

7 "Well, you have to make it look right.
8 Well, you know, there is time spent consenting to patients.
9 And you have to make it look right. You have to be able to
10 justify it."

11 I mean, the idea of what were those costs is
12 central to the legality of the action and is central to
13 what was in those videos, too, in terms of: Were they
14 really saying "We're going to make a profit"?

15 Were they saying: "Well, we do have some
16 costs, but they are not legally allowable costs."

17 So I don't see how you separate those two
18 because, you know, this discovery goes to what were they
19 talking about in those videos.

20 They say it was one thing. It sure doesn't
21 look like that to other people. So, I mean, I think those
22 are -- that's what we're trying to straighten out here:
23 What were they talking about in the videos when they talked
24 about:

25 "Well, there are costs"?

1 **THE COURT:** Okay. Ms. Bomse?

2 **MS. BOMSE:** Yes. So I think Your Honor is
3 exactly right. This is an after-the-fact attempt to find
4 the evidence that they said they had.

5 I'd like to share with the Court the
6 statements that CMP released, their press releases when
7 they released these videos, because what they said is:

8 "We have the evidence."

9 So it strikes me as odd that we're here now
10 with them saying:

11 "We need the evidence."

12 And this is why we were harmed. The
13 representation was:

14 "We've got them. We caught them
15 read-handed."

16 David Daleiden said:

17 "Planned Parenthood's system-wide
18 conspiracy to make money off aborting fetal tissue is now
19 undeniable."

20 Three weeks later he said:

21 "The evidence that Planned Parenthood
22 profits from the sale of aborted baby parts is
23 overwhelming."

24 These are -- I'd be happy, Your Honor -- I
25 have copies with me today, and I'd be happy to submit these

1 press releases, although they are also available online.

2 But the point is that they said they had the
3 evidence. And it's not enough that they released a press
4 release saying:

5 "You violated the law."

6 And then, when we sue them for our harm they
7 can say:

8 "Oh, now we can come in and see whether
9 anyone in your organization violated the law."

10 Three of the four affiliates, Your Honor,
11 don't appear in any video. The only affiliate who Dr.
12 Nucatola, who is not identified as a doctor at Planned
13 Parenthood Los Angeles, who worked part-time as a PPLA
14 doctor, but also was senior leadership in Planned
15 Parenthood. And that is what Defendants were so excited
16 about. That's how they refer to her.

17 But I just want to say I don't want to
18 represent to the Court that none of the four affiliates
19 were even talked to. But three of four were not talked to.
20 This --

21 **THE COURT:** So just PPLA through Nucatola.

22 **MS. BOMSE:** That's right. And there was nothing
23 about PPLA in any event.

24 **THE COURT:** Can I ask you, Ms. Bomse, the press
25 releases, are those part of the record already?

1 **MS. BOMSE:** I don't believe so, Your Honor.

2 **THE COURT:** Okay. So along with what I've asked
3 for, please submit them.

4 **MS. BOMSE:** Your Honor, it's not our burden to
5 show that we were in compliance with the law. It's our
6 burden to show that their videos were a substantial cause
7 of our harm.

8 And Mr. Breen's reference to Food Lion, Your
9 Honor said it was gloss. I agree it's a gloss.

10 This case is entirely different from Food
11 Lion. Food Lion, the claim was they lost their customers.
12 We're not claiming anyone stopped going to seek healthcare
13 at Planned Parenthood because of these videos.

14 We're claiming the opposite. We're claiming
15 the opposite of our customers. People who already were
16 hostile to Planned Parenthood were motivated to act out
17 against Planned Parenthood, and we have to secure our
18 facilities for that.

19 **THE COURT:** Okay. I'll take some last comments,
20 but what I really need is the evidence that I've asked you
21 to submit. And then, I'll take a look. If I need you
22 back, then I'll have you back. Okay?

23 So the last comments are, Mr. Breen?

24 **MR. BREEN:** Thank you, Your Honor. Just there
25 are clarifications here on the record that just, very

1 quickly, we talked to PPLA. We talked to PPSW, P make
2 more, too. PP more than California. We talked to all
3 these affiliates.

4 But, as well, Your Honor, you continue to hear
5 now we're looking at press releases. You've got
6 allegations that this is a smear campaign that goes to
7 broader than: Were your videos edited correctly? Or what
8 have you. Were you right or wrong?

9 You're making allegations, and Planned
10 Parenthood is saying: "Those are false allegations."

11 We are entitled to prove, you know, we were --
12 it's true. And they respectfully contend it is the
13 Plaintiff's burden to prove that we have somehow falsified
14 those allegations.

15 **THE COURT:** Here's the gloss. And what is the --
16 and I'm not accusing you of gloss, Mr. Breen. It's just
17 the one I'm concerned about.

18 If there's nothing there and now your clients
19 are looking for something. Right? That's an entirely
20 different proposition.

21 That's what I need to focus on with respect to
22 whether something is relevant or not. As I said, that
23 likely is not admissible if it's after-the-fact materials.
24 Okay?

25 I don't want to go -- that's Judge Orrick's

1 call. But what I'm saying is if it's -- if it turns out
2 there is no evidence of violating the law. Okay? And you
3 get this discovery and it looks like -- it turns out, just
4 theoretically, that there is a violation. I'm not sure
5 that's admissible. Okay?

6 Now, admissibility is not where you draw the
7 line on discovery, so that doesn't answer the question.
8 But that is what I'm concerned about. That's why I'm
9 asking these questions. Okay?

10 **MR. BREEN:** And, again, you can see, Your Honor,
11 for us that, I mean, it's certainly relevant to whether
12 they are correct. If their claims that they did not
13 violate the law are wrong, well, then they need to --
14 that's certainly relevant.

15 **THE COURT:** Mr. Breen, I'm not sure it's relevant
16 if it all happens after the fact. But I don't know. And
17 that's why I would like to look at the information and only
18 the information. Don't start piling on. Counsel, identify
19 key information. That's all I want. I will disregard
20 anything that you put in the record that I didn't just ask
21 for. Let me be clear. Okay?

22 So I see a Conga line forming behind you. I
23 will take two quick comments, and then I think we've had a
24 pretty thorough discussion here.

25 **MR. MILLEN:** Michael Millen for Defendant

1 Rhomberg.

2 Your Honor, to me there's a kind of a
3 procedural conundrum that this -- I've heard all your
4 concerns and what you're saying that this brings up, which
5 is the judge who rules on the discovery -- which is, of
6 course, is you -- is not the same judge who rules on the
7 motions in limine.

8 And so there is a concern, at least speaking
9 on behalf of my client, that if, indeed, it's true that,
10 you know, this is a smear campaign is not relevant. In
11 other words, it's not important. I suppose in the world
12 where there's a motion in limine where Planned Parenthood
13 is not allowed to say "And they made untrue statements,"
14 suddenly I begin to see the Court's point, which is: They
15 are not talking about whether untrue statements were made,
16 so why are we getting into it?

17 **THE COURT:** Mr. Millen, I don't think there's a
18 problem here. And if I wasn't clear about this, let me
19 just state it: The scope of discovery, in other words,
20 what I allow in discovery is not defined by what is
21 admissible.

22 So if I think it's not admissible, it still
23 may be discoverable. And I'm well aware of that. So I
24 will not be making decisions that are essentially motions
25 in limine in hiding. I can't do that. That would be

1 inconsistent with Rule 26. I think that's the point you're
2 making.

3 **MR. MILLEN:** I just wondered if there was a world
4 where in this sort of situation it actually made sense to
5 go to Judge Orrick -- even though we have like a trial for
6 next year. We're way, way early here in 2018 -- to ask
7 judge Orrick, because I've heard you talk about evidence
8 and admissibility, and I understand what the Court is
9 saying. Whether that's something where to get out of this
10 interesting conundrum we go to Judge Orrick and say:

11 "Is there a time for a motion in limine to
12 figure it out?" Because, obviously, if he said: "Don't
13 want to hear it" --

14 **THE COURT:** I don't -- you know, that is not the
15 way I'm planning on handling it. In other words, suggest
16 that he do a way premature motion in limine. Okay?

17 If I need to consult with him or if he needs
18 to consult with me, that's always available. So --

19 **MR. MILLEN:** Thank you.

20 **THE COURT:** But I think that's something you need
21 to leave to me. But I hear your point, which is that this
22 is not about admissibility. And I've acknowledged that.
23 Okay?

24 But I was using that as a way to express the
25 way I'm thinking about this, which is the relevance is tied

1 to whether this is something that is relevant to an issue
2 that is going to be discussed at trial.

3 **MR. MILLEN:** Thank you.

4 **THE COURT:** Okay. Ms. Short, your brief comment.

5 **MS. SHORT:** First of all, please note the dates
6 on the press releases, because already various panels have
7 started working.

8 So when Mr. Daleiden contributed those in the
9 context of what was going on at the time, Mr. Daleiden
10 might have been referring to the work of the select panel
11 at the time he made those comments:

12 "But now we have the evidence. Now we
13 see."

14 And the second thing is, I mean, I guess the
15 question is if you say it's not discoverable, I think you
16 said you well understand how something may be discoverable
17 but not admissible, we worry about the flip side of that.
18 Which that you will say "It's not discoverable," but then
19 come trial, they will be saying:

20 "And, by the way, we were totally in
21 compliance with the law."

22 And, you know --

23 **THE COURT:** I get it.

24 **MS. SHORT:** -- what are you supposed to say at
25 that point?

1 **THE COURT:** I get it. You're entitled to -- I'm
2 sorry if I'm repeating myself -- relevant and proportional.
3 That's what defines discoverability.

4 The rule changed in 2015. It is now part of
5 the definition of what you're allowed to discover.

6 So if it turns out there's some information
7 that make it proportional, but other things that are not,
8 that may be what that ruling looks like. Okay?

9 **MS. SHORT:** I would -- Planned Parenthood of
10 Northern California indicated that it had done an
11 accounting, some sort of contemporaneous accounting, so
12 that one should not be very difficult for your people.

13 **MS. BOMSE:** Sorry?

14 **THE COURT:** Say that again?

15 **MS. SHORT:** In their request for admissions
16 Planned Parenthood indicated that it -- it denied it had
17 not been doing contemporaneous accounting. That's as much
18 as I can say. They denied -- they did not -- they said
19 that it was not keeping contemporaneous records.

20 That's false. So that should factor into
21 proportionality, because apparently one of those affiliates
22 was keeping contemporaneous records.

23 **THE COURT:** I see.

24 Go ahead, Ms. Bomse.

25 **MS. BOMSE:** Thank you, Your Honor. So when the

1 Court's thinking about this, what I want the Court -- what
2 Plaintiffs would like the Court to think about is: What is
3 the smear?

4 And the smear is not some affiliate had
5 greater reimbursements than costs. That smear, the smear
6 here was that Planned Parenthood was a Little Shop of
7 Horrors, bringing in babies, aborting them in order to sell
8 their baby parts.

9 And let me give you an example of what was
10 said by Mr. Daleiden.

11 "The entire Planned Parenthood
12 organization is a horrific late-term abortion and baby
13 parts business. Videos about Planned Parenthood and the
14 babies they kill and part out like used cars. That's what
15 the videos show."

16 And so that's why our position here is they
17 can't now say, years after we already suffered the harm:

18 "No, now what we really said was you may
19 have violated some law, and we're entitled to find out if
20 you did," because that's not what caused our harm.

21 What caused our harm were these extraordinary
22 claims and claims that they had the evidence of it.

23 Lastly, Your Honor, just in response to Ms.
24 Short --

25 **THE COURT:** Yes. Okay.

1 **MS. BOMSE:** -- on July 15th, when the first video
2 was released, Center for Medical Progress issued a press
3 release that said that:

4 "The videos show that Planned
5 Parenthood's criminal conspiracy to make money off aborted
6 baby parts reaches to the very highest levels of the
7 organization."

8 So they weren't talking about what Congress
9 had figured out. They were talking about the evidence that
10 they claimed to have uncovered.

11 So let's go to trial and see what they
12 actually uncovered.

13 **THE COURT:** Okay. I'd actually like you to
14 address Ms. Short's last point, which is that there is some
15 affiliate that actually kept track so that it's not
16 burdensome.

17 **MS. BOMSE:** Thank you. Thank you, Your Honor. I
18 would have to go back and talk to the client.

19 My recollection is that at -- prior to --
20 we've been told prior to beginning this program at Planned
21 Parenthood Northern California, there was an effort to
22 figure out the costs. This is a long time ago. I don't
23 know if these are still extant or not.

24 And I would still maintain that without any
25 burden there's absolutely no relevance. But we'll

1 certainly be happy to go back and find out from the client
2 and let the Court know what the status is of that.

3 **THE COURT:** Okay.

4 Because Ms. Short raised it, so it sounds --
5 here's what I think you said, Ms. Short. You can infer
6 from the way that the RFA's were answered that at least one
7 affiliate actually did keep some accounting, which would
8 make it easy for them, or not so burdensome for that
9 accounting to be turned over in discovery.

10 So I would like you to follow up on that point
11 and submit a brief factual report.

12 So I'm asking -- I'm actually ordering the
13 parties to only give me what I ask for and not include any
14 further evidence or argument.

15 And I'm saying that because in the first round
16 where we did the omnibus, there was -- I had to deal with
17 so many issues of things that were not brought up before
18 and were brought up later, and it became a moving target.
19 I will not put up with that. I just want folks to know.

20 If you do something beyond what I just
21 ordered, I'm going to ignore it.

22 If there's something more I want, I will let
23 you know. And if I want you to come back, then I'll have
24 you back in and we'll do some more argument. Okay?

25 **MR. BREEN:** And then, Your Honor, just so our

1 list is correct, we've got the request to admit we were
2 discussing. Those should be submitted to the Court.

3 **THE COURT:** Not all of them. Just the ones
4 Ms. Short mentioned. So sounded like there was a handful
5 of them.

6 **MS. SHORT:** I think there's one. The excerpts or
7 the pages --

8 **THE COURT:** No. What I'm picturing is is there's
9 a big set of RFA's, but there's only five to ten that you
10 were just talking about.

11 I only want those five to ten. Okay?

12 **MS. SHORT:** Pages, okay. Or pages that have
13 those five to ten.

14 **THE COURT:** Right. I don't need the entire set
15 of things that I'm not going to be reviewing. Okay?

16 **MR. BREEN:** And then, the unedited videos of the
17 Nucatola and Gatter lunches, and then the posted videos,
18 the ones that were --

19 **THE COURT:** Of the same. What was created of
20 that raw video that became the Nucatola and Gatter public
21 videos.

22 **MR. BREEN:** And then, you want the press releases
23 that were sent out by Center for Medical Progress on this
24 topic or with those videos or --

25 **THE COURT:** No, just what Ms. Bomse had

1 referenced here today.

2 **MR. BREEN:** And, Your Honor, there's a blog.
3 They posted it on the blog with the video and the release.
4 So for each of the Nucatola and Gatter videos there was a
5 video and release that went with it.

6 **MS. BOMSE:** Counsel, I have those press releases.

7 **MR. BREEN:** I don't think it's going to be an
8 issue. I thought Your Honor wanted those.

9 **MS. BOMSE:** Right. And we can easily get them.
10 I don't think there's confusion about them. And I know
11 exactly which ones they were.

12 **THE COURT:** Okay. So those, the press releases
13 and the short factual summary about what auditing practices
14 may or may not happen in one affiliate. That's something
15 the plaintiff should provide.

16 **MS. BOMSE:** Right. Exactly.

17 **THE COURT:** Everything else so far should come
18 from the defense. There's Congressional reports, two of
19 those.

20 **MS. SHORT:** Would Your Honor like those
21 highlighted or do you think you have the --

22 **THE COURT:** Mr. Jonna gave me some pinpoints, as
23 did each of you. And Ms. Bomse had some comments.

24 And, again, because I don't want further
25 argument, because then it just sort of spins out of

1 control, folks. And I can review them and take a look.

2 So you don't need to highlight them, although
3 I appreciate the offer.

4 So those two, except if they are already in
5 the record, just tell me where they are in the record and
6 you don't need to resubmit them.

7 I think that's it.

8 **MS. BOMSE:** That's it.

9 **THE COURT:** That was it.

10 **MS. BOMSE:** And, Your Honor, I assume Counsel for
11 defendants will share with us the video that they are
12 planning to provide to the Court before they provide it.

13 **MR. BREEN:** I'm assuming it's been turned over in
14 discovery previously.

15 **MS. BOMSE:** Well, I just want to know exactly
16 what has been given to the Court.

17 **MR. BREEN:** Certainly.

18 **THE COURT:** Right. Because we have an issue. We
19 can't post these as a part of the docket. Right?

20 You are going to have to submit them in
21 camera.

22 **MS. BOMSE:** Yes.

23 **MR. BREEN:** They are not secret or in any way
24 enjoined.

25 **MS. BOMSE:** Right. They are not enjoined, that's

1 true.

2 **THE COURT:** Well, I think it still is better
3 because it's video, please just go ahead and submit them to
4 Ms. Bomse for -- so she can approve as to form. And then
5 submit them in camera to me.

6 We didn't need to post the videos on the
7 website, on our docket. Okay?

8 How much time, Counsel, do you need to get
9 this homework done?

10 **MS. BOMSE:** On my end the only issue is whether
11 someone at that affiliate is on vacation right now. So I
12 guess I would say two weeks to be safe.

13 Everything else, I think the materials that
14 exist already seems like a week should be more than enough.

15 **MR. BREEN:** Two weeks.

16 **THE COURT:** All right. Why don't we say two
17 weeks?

18 So that puts us out to August 2nd.

19 Okay? I promise to take a look at everything.

20 And if I have questions, I'm going to have you
21 back.

22 Otherwise, I'll be issuing an order.

23 Okay?

24 **MS. BOMSE:** Thank you, Your Honor.

25 **THE COURT:** All right. Thank you.

1 **THE CLERK:** Court is now adjourned.

2 (Thereupon, this hearing was concluded.)

3 Stenography certification

4 "I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter."

5 July 22, 2018

6 /s/Katherine Wyatt

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25